

**ASSEMBLY BILL**

**No. 1260**

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**Introduced by Assembly Member Hancock**

February 22, 2005

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An act to amend Sections 56157, 56366.10, and 56836.173 of, and to add Section 56836.19 to, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1260, as introduced, Hancock. Pupils in out-of-home placement.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing state law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program.

Under existing state law, if an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the local educational agency that made the placement shall conduct an annual evaluation, in accordance with federal law as part of the annual individualized education program process, of whether the placement is the least restrictive environment that is appropriate to meet the pupil's needs.

This bill would provide that this provision does not prohibit a licensed children's institution from defining the target population of children that its residential program is designed to serve.

Under existing law, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs is required to certify in writing to the Superintendent of Public Instruction that it meets specified requirements, including, among others, that pupils have access to the specified educational materials, services, and programs to the extent available at the local educational agency in which the nonpublic school is located.

This bill, instead, would require that the nonpublic, nonsectarian school certify that pupils have access to those materials to the extent that they are accessible at the local educational agency in which the nonpublic, nonsectarian school is located.

Existing law requires the Superintendent to apportion moneys to a school district and county superintendent of schools to fund costs associated with providing special education instruction, designated instruction and services, or both, by nonpublic, nonsectarian schools and agencies to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities.

This bill would revise that formula.

Under existing law, each school district, special education local plan area, or county office of education is responsible for providing appropriate education to individuals with exceptional needs residing in a licensed children's institution or foster family home located in the geographical area covered by the local plan. Existing law requires the school district, special education local plan area, or county office of education, in providing appropriate programs, to first consider services in programs operated by a public education agency. Under existing law, if those programs are not appropriate, special education and related services are required to be provided by contract with a nonpublic, nonsectarian school that is certified by the Superintendent.

This bill would also require that funds allocated to a local educational agency under the specified funding formula for determining apportion moneys to a school district and county superintendent of schools to fund costs associated with providing special education instruction, designated instruction and services, or both, by nonpublic, nonsectarian schools and agencies to pupils in licensed children's institutions, foster family homes, residential

medical facilities, and other similar facilities, be used first for special education services provided in public schools or in nonpublic, nonsectarian schools, for pupils, meeting specified requirements, who reside in licensed children's institutions, foster family homes, residential medical facilities, or other similar facilities.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 56157 of the Education Code is  
2 amended to read:

3 56157. (a) In providing appropriate programs to individuals  
4 with exceptional needs residing in licensed children's institutions  
5 or foster family homes, the local educational agency shall first  
6 consider services in programs operated by public education  
7 agencies for individuals with exceptional needs. If those  
8 programs are not appropriate, special education and related  
9 services shall be provided by contract with a nonpublic,  
10 nonsectarian school.

11 (b) If special education and related services are provided by  
12 contract with a nonpublic, nonsectarian school, or with a licensed  
13 children's institution under this article, the terms of the contract  
14 shall be developed in accordance with the provisions of Section  
15 56366.

16 (c) If an individual with exceptional needs residing in a  
17 licensed children's institution or foster family home is placed in  
18 a nonpublic, nonsectarian school, the local educational agency  
19 that made the placement shall conduct an annual evaluation, in  
20 accordance with federal law as part of the annual individualized  
21 education program process, of whether the placement is the least  
22 restrictive environment that is appropriate to meet the pupil's  
23 needs.

24 (d) If an individual with exceptional needs residing in a  
25 licensed children's institution or foster family home is placed in  
26 a nonpublic, nonsectarian school, the nonpublic, nonsectarian  
27 school shall report to the local educational agency that made the  
28 placement, on a quarterly or trimester basis, as appropriate, the  
29 educational progress demonstrated by the individual with  
30 exceptional needs towards the attainment of the goals and

1 objectives specified in the individual's individualized education  
2 program. Pursuant to federal law, no local educational agency  
3 shall refer a pupil to a nonpublic, nonsectarian school, unless the  
4 services required by the individualized education program of the  
5 pupil can be assured.

6 *(e) This section does not prohibit a licensed children's*  
7 *institution from defining the target population of children that its*  
8 *residential program is designed to serve.*

9 SEC. 2. Section 56366.10 of the Education Code is amended  
10 to read:

11 56366.10. In addition to the certification requirements set  
12 forth in Sections 56366 and 56366.1, a nonpublic, nonsectarian  
13 school that provides special education and related services to an  
14 individual with exceptional needs shall certify in writing to the  
15 ~~superintendent~~ *Superintendent* that it meets all of the following  
16 requirements:

17 (a) It will not accept a pupil with exceptional needs if it cannot  
18 provide or ensure the provision of the services outlined in the  
19 ~~pupil's~~ individualized education program *of the pupil*.

20 (b) Pupils have access to the following educational materials,  
21 services, and programs to the extent ~~available~~ *that they are*  
22 *accessible* at the local educational agency in which the  
23 nonpublic, *nonsectarian* school is located:

24 (1) Standards-based, core curriculum and the same  
25 instructional materials used by the local educational agency in  
26 which the nonpublic, nonsectarian school is located.

27 (2) College preparation courses.

28 (3) Extracurricular activities, such as art, sports, music, and  
29 academic clubs.

30 (4) Career preparation and vocational training, consistent with  
31 transition plans pursuant to state and federal law.

32 (5) Supplemental assistance, including individual academic  
33 tutoring, psychological counseling, and career and college  
34 counseling.

35 (c) The teachers and staff provide academic instruction and  
36 support services to pupils with the goal of integrating pupils into  
37 the least restrictive environment pursuant to federal law.

38 (d) The school has and abides by a written policy for pupil  
39 discipline which is consistent with state and federal law and  
40 regulations.

1 SEC. 3. Section 56836.173 of the Education Code is amended  
2 to read:

3 56836.173. (a) The department shall apportion to each  
4 special education local plan area the amount determined in this  
5 section.

6 (b) For the 2004–05 and 2005–06 fiscal years, the amount  
7 apportioned shall be as follows:

8 (1) If the out-of-home care funding amount calculated for a  
9 special education local plan area is less than or equal to the  
10 amount a special education local plan area received pursuant to  
11 former Sections 56836.16 and 56836.17 for the ~~2002–03~~  
12 ~~2003–04~~ fiscal year, the special education local plan area shall  
13 receive the same amount it received for the ~~2002–03~~ ~~2003–04~~  
14 fiscal year. For purposes of this section, the amount of funding  
15 received by a special education local plan area for the ~~2002–03~~  
16 ~~2003–04~~ fiscal year shall be based on the annual recertification  
17 of the ~~2002–03~~ ~~2003–04~~ fiscal year, as certified by the  
18 department in July of ~~2004~~ 2005.

19 (2) For special education local plan areas other than those  
20 funded through paragraph (1), special education local plan areas  
21 shall receive the amount received for the ~~2002–03~~ ~~2003–04~~ fiscal  
22 year plus the amount calculated in paragraph (3).

23 (3) For special education local plan areas other than those  
24 funded through paragraph (1), each special education local plan  
25 area shall also receive the difference between the out-of-home  
26 care funding amount for the special education local plan area and  
27 the amount received for the ~~2002–03~~ ~~2003–04~~ fiscal year for that  
28 special education local plan area divided by the sum of the  
29 difference between the out-of-home care funding amount and the  
30 amount received in the ~~2002–03~~ ~~2003–04~~ fiscal year for all  
31 special education local plan areas times the amount of funds  
32 provided for Section 56836.165 in the annual Budget Act that has  
33 not been allocated in paragraph (1) or (2).

34 (c) For the 2006–07 fiscal year, the amount apportioned shall  
35 be as follows:

36 (1) If the out-of-home care funding amount calculated for a  
37 special education local plan area for the 2006–07 fiscal year is  
38 less than or equal to the amount a special education local plan  
39 area received for the 2005–06 fiscal year, the special education  
40 local plan area shall receive the same amount it received for the

1 2005–06 fiscal year less 20 percent of the difference between the  
2 amount received for the 2005–06 fiscal year and the out-of-home  
3 care funding amount computed for the 2006–07 fiscal year.

4 (2) For special education local plan areas other than those  
5 funded through paragraph (1), special education local plan areas  
6 shall receive the amount received for the 2005–06 fiscal year.

7 (3) For special education local plan areas other than those  
8 funded through paragraph (1), each special education local plan  
9 area shall also receive the difference between the out-of-home  
10 care funding amount for that special education local plan area  
11 and the amount received for the 2005–06 fiscal year for that  
12 special education local plan area divided by the sum of the  
13 difference between the out-of-home care funding amount and the  
14 amount received in the 2005–06 fiscal year for all special  
15 education local plan areas times the amount of funds provided for  
16 Section 56836.165 in the annual Budget Act that has not been  
17 allocated in paragraph (1) or (2).

18 (d) For the 2007–08 fiscal year, the amount apportioned shall  
19 be as follows:

20 (1) If the out-of-home care funding amount calculated for a  
21 special education local plan area for the 2007–08 fiscal year is  
22 less than or equal to the amount a special education local plan  
23 area received for the 2006–07 fiscal year, the special education  
24 local plan area shall receive the same amount it received for the  
25 2006–07 fiscal year less 25 percent of the difference between the  
26 amount received for the 2006–07 fiscal year and the out-of-home  
27 care funding amount computed for the 2007–08 fiscal year.

28 (2) For special education local plan areas other than those  
29 funded through paragraph (1), special education local plan areas  
30 shall receive the amount received for the 2006–07 fiscal year.

31 (3) For special education local plan areas other than those  
32 funded through paragraph (1), each special education local plan  
33 area shall also receive the difference between the out-of-home  
34 care funding amount for that special education local plan area  
35 and the amount received for the 2006–07 fiscal year for that  
36 special education local plan area divided by the sum of the  
37 difference between the out-of-home care funding amount and the  
38 amount received in the 2006–07 fiscal year for all special  
39 education local plan areas times the amount of funds provided for

1 Section 56836.165 in the annual Budget Act that has not been  
2 allocated in paragraph (1) or (2).

3 (e) For the 2008–09 fiscal year, the amount apportioned shall  
4 be as follows:

5 (1) If the out-of-home care funding amount calculated for a  
6 special education local plan area for the 2008–09 fiscal year is  
7 less than or equal to the amount a special education local plan  
8 area received for the 2007–08 fiscal year, the special education  
9 local plan area shall receive the same amount it received for the  
10 2007–08 fiscal year less 33 percent of the difference between the  
11 amount received for the 2007–08 fiscal year and the out-of-home  
12 care funding amount computed for the 2008–09 fiscal year.

13 (2) For special education local plan areas other than those  
14 funded through paragraph (1), special education local plan areas  
15 shall receive the amount received for the 2007–08 fiscal year.

16 (3) For special education local plan areas other than those  
17 funded through paragraph (1), each special education local plan  
18 area shall also receive the difference between the out-of-home  
19 care funding amount for that special education local plan area  
20 and the amount received for the 2007–08 fiscal year for that  
21 special education local plan area divided by the sum of the  
22 difference between the out-of-home care funding amount and the  
23 amount received in the 2007–08 fiscal year for all special  
24 education local plan areas times the amount of funds provided for  
25 Section 56836.165 in the annual Budget Act that has not been  
26 allocated in paragraph (1) or (2).

27 (f) For the 2009–10 fiscal year, the amount apportioned shall  
28 be as follows:

29 (1) If the out-of-home care funding amount calculated for a  
30 special education local plan area for the 2009–10 fiscal year is  
31 less than or equal to the amount a special education local plan  
32 area received for the 2008–09 fiscal year, the special education  
33 local plan area shall receive the same amount it received for the  
34 2008–09 fiscal year less 50 percent of the difference between the  
35 amount received for the 2008–09 fiscal year and the out-of-home  
36 care funding amount computed for the 2009–10 fiscal year.

37 (2) For special education local plan areas other than those  
38 funded through paragraph (1), special education local plan areas  
39 shall receive the amount received for the 2008–09 fiscal year.

1 (3) For special education local plan areas other than those  
2 funded through paragraph (1), each special education local plan  
3 area shall also receive the difference between the out-of-home  
4 care funding amount for that special education local plan area  
5 and the amount received for the 2008–09 fiscal year for that  
6 special education local plan area divided by the sum of the  
7 difference between the out-of-home care funding amount and the  
8 amount received in the 2008–09 fiscal year for all special  
9 education local plan areas times the amount of funds provided for  
10 Section 56836.165 in the annual Budget Act that has not been  
11 allocated in paragraph (1) or (2).

12 (g) Beginning in the 2010–11 fiscal year, the amount provided  
13 to special education local plan areas shall be equal to the amount  
14 calculated pursuant to Section 56836.165. If the sum of the  
15 amounts for all special education local plan areas exceeds the  
16 Budget Act appropriation for this purpose, the department shall  
17 apply proportionate reductions to all special education local plan  
18 areas.

19 SEC. 4. Section 56836.19 is added to the Education Code, to  
20 read:

21 56836.19. Funds allocated to a local educational agency under  
22 the funding formula prescribed in Sections 56836.165 and  
23 56836.173 shall be used first for special education services  
24 provided in public schools or in nonpublic, nonsectarian schools,  
25 for pupils meeting the requirements of Section 56155 who reside  
26 in licensed children’s institutions and foster family homes as  
27 defined in Section 56155.5, residential medical facilities, or other  
28 similar facilities.